

H.R. 7094--Mr. Rangel

Independent Asset Management for
Certain Multiemployer Plans

Present Law

Background

In 1976, the Internal Revenue Service revoked the tax-exempt status of Teamsters' Central States Pension Fund stating that the Fund was not being managed for the exclusive benefit of the participants and beneficiaries. The Fund's exempt status was reinstated in 1977 pursuant to an agreement under which, inter alia, fund assets (now approximately \$3.5 billion) were placed under the control of independent asset managers (the Equitable Life Assurance Society and Victor Palmieri and Company, Inc.). The Fund's agreement with the independent managers expires October 3, 1982.

Revocation of tax-qualification

Under present law if the tax exemption of a trust forming a part of a pension plan is revoked (1) the trust is no longer exempt from tax, (2) plan participants and beneficiaries are taxed on plan benefits as the benefits vest, and (3) deductions for employer contributions may be disallowed. However, these disqualification sanctions are largely unenforceable with respect to a plan like the Teamsters' Central States Pension Fund. The Fund could be expected to have no taxable income (payments to participants and beneficiaries could be expected to exceed the income on trust assets). The Fund has 500,000 participants and beneficiaries and thousands of contributing employers. Any effort to establish an annual income inclusion for each participant or beneficiary is clearly impractical if not impossible. Also, disallowance of employer deductions could seriously impair the plan and contributing employers.

The disqualification sanctions do not directly impact plan trustees or the plan administrator.

Explanation of Bill

The proposal would impose a new excise tax sanction in any case in which (1) a favorable determination letter issued by the Internal Revenue Service to a multiemployer plan is conditioned upon some or all plan assets being held by a qualified independent manager, (2) the determination letter is agreed to in writing by or on behalf of the plan, and (3) a plan trustee or administrator

takes any action which he knows (or should know) will result in a violation of the independent asset management condition. The tax is imposed on the trustee or administrator for each month for which the violation is in effect in an amount equal to one-half of one percent of the fair market value of the assets involved in the violation. However, the amount imposed for any month cannot exceed \$400,000.

Under the proposal, the liability of the trustees or administrator with respect to a violation is joint and several. In addition, if a trustee's assets are not sufficient to pay the tax for any month, the organization which appointed the trustee is secondarily liable.

The proposal also provides that if a taxpayer establishes to the satisfaction of the Secretary of the Treasury that an action (or failure to act) is due to reasonable cause, and that the taxpayer has taken action to correct the violation, then all or a part of the excise tax may be abated.

The proposal follows the request of the Departments of the Treasury and Labor that the Committee on Ways and Means consider and take prompt action on legislation to provide an additional remedy (i.e., other than revocation of a multiemployer plan's tax-qualification) to more effectively safeguard plan assets.

Effective Date

The bill would apply with respect to actions taken (or failed to be taken) by a plan trustee or plan administrator after September 14, 1982.

